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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/166984

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 01, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on July 21, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner was overpaid child care because the father of her child was living with her.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

;

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: [REDACTED]  
Milwaukee Early Care Administration - MECA  
Department of Children And Families  
1220 W. Vliet St. 2nd Floor, 200 East  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner received child care benefits during the time period of March, 2014, through June, 2015. She has one child, ACT who was in child care during that period.

3. In 2015, the respondent investigated the residence of JC, the father of ACT. The respondent concluded that JC was residing with petitioner and ACT at [REDACTED] Wisconsin since at least March of 2015. JC was employed between March of 2015 and August of 2014; JC was not employed between September of 2014, through June of 2015. See, Exhibit 1, pp 1-8.
4. By a notice dated July 6, 2015, the county informed petitioner that she was overpaid child care benefits because JC was residing in her home, thus making the household ineligible for child care per the following claims:
 

Claim No. [REDACTED]	03/01/2014 – 01/31/2015	\$7,320.31
Claim No. [REDACTED]	02/01/2015 – 05/31/2015	\$2,481.50
Claim No. [REDACTED]	06/01/2015 – 06/30/2015	\$ 295.40

Exhibit 1, pp. 17-34.
5. At all times relevant to this matter, petitioner has resided at [REDACTED] Wisconsin. JC is not named on her lease.
6. JC uses petitioner's residence as his mailing address.

### DISCUSSION

Child Care benefits are provided to W-2 participants who are working in unsubsidized employment, in job training, in a job search under the FoodShare program, or in an approved technical school program. (Benefits are also allowed to those in high school or under 20 years old, but the petitioner is older than that.) Wis. Stat. § 49.155(1m)(a). The W-2 statute requires the department to recover all Child Care overpayments regardless of who is at fault. Wis. Stat. § 49.195(3). The Wis. Adm. Code, § DCF 101.23(1)(g), explains this in the following way:

(g) "Overpayment" or "debt" means any benefit or payment received under s. [49.148](#), [49.155](#), [49.157](#), or [49.19](#), Stats., in an amount greater than the amount that the individual, AFDC assistance group, or W-2 group was eligible to receive under applicable statutes and rules, regardless of the reason for the overpayment. An overpayment may be the result of client error, administrative error, or intentional program violation.

In a Fair Hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken by it is proper given the facts of the case. If the agency meets its burden, the petitioner must then rebut the agency's case and establish facts sufficient to overcome the agency's evidence of correct action.

The child care subsidy program's authorizing statute contains financial and nonfinancial eligibility criteria. If parents do not meet the eligibility criteria, then they are not eligible for child care (CC) benefits. In this case, the agency asserts that JC resided with the petitioner during the overpayment periods and that he was not engaged in an approved activity, making him available to provide child care. The pertinent portion of the statute setting out nonfinancial eligibility criteria reads as follows:

(1m) ELIGIBILITY. A Wisconsin works agency shall determine eligibility for a child care subsidy under this section. Under this section, an individual may receive a subsidy for child care for a child who has not attained the age of 13 ...if the individual meets all of the following conditions:

- (a) The individual is a parent of a child who is under the age of 13 ...and child care services for that child are needed in order for the individual to do any of the following:

1. Meet the school attendance requirement under s.49.26(1)(ge)[Learnfare, for minor parents].
- 1m. Obtain a high school diploma ...
2. Work in an unsubsidized job ...
3. Work in a Wisconsin works employment position ...
- 3m. Participate in a job search or work experience component of the food stamp ... program.
4. If the Wisconsin works agency determines that basic education would facilitate the individual's efforts to maintain employment, participate in basic education ... An individual may receive aid under this subdivision for up to 2 years.
5. Participate in a course of study at a technical college... An individual may receive aid under this subdivision for up to 2 years.

Wis. Stat. §49.155(1m)(a). See also Wisconsin Shares Child Care Manual (Manual) at §1.4.8.

The Manual provides that: "In two parent families both parents in the AG (assistance group) including step parents and non-marital co-parents must be participating in approved activities. . ." Manual, §1.4.8.2.

The Manual defines child care family or family group as including any nonmarital coparent or any spouse of the individual who resides in the same household as the individual and any dependent children with respect to whom the spouse or nonmarital coparent is a custodial parent. Manual, §1.2.0.

**There is no question that the county paid for child care services during the period** in question. The respondent asserts that petitioner was ineligible for the child care benefits that she received during the overpayment period because JC was living in her home, a co-parent of ACT, and her household income exceeded program limits while JC was employed, and when JC was not working he was available to provide child care. If correct, that means that the petitioner was overpaid for the entire period. The petitioner did not refute the respondent's assertions regarding JC's employment and his unemployment, nor does she refute that he is the father of her child, ACT.

The agency has produced a number of document-based assertions to support its contention that JC resided with petitioner and ACT during the overpayment periods specified in Finding of Fact no. 4, above.

The documentation shows that JC identified petitioner's address as his own while a recipient of Food Share benefits. Exhibit 2, p. 119. JC utilized petitioner's address for Unemployment Insurance benefits purposes. Exhibit 2, pp. 127-128. Petitioner submitted an online FoodShare ACCESS application identifying petitioner's address as his own. Exhibit 2, pp. 133-145. A Verification of Social Services Verification indicates that JC's address was indicated to be that of petitioner's. Exhibit 2, pp. 162-164. An Employer Verification of Earnings form prepared by JC's employer identifies JC's address as that of petitioner. Exhibit 2, pp. 165-167. Information gleaned from Thomson Reuters CLEAR (Consolidated Lead Evaluation and Reporting) and from the Wisconsin Department of Transportation indicates historical residences of JC; included among them are petitioner's residence as well as the residence of JC's mother. Exhibit 2, pp. 168-169 and pp. 170-178.

Petitioner testified that JC has never lived with her. She indicated that she and JC do not have a great relationship, and described it as on-and-off. The petitioner provided written statements from herself, JC and from JC's mother, both of whom assert that JC resides with his mother. See, Exhibit 3, pp.4-7. A letter from an individual identified as petitioner's father indicates that he is the owner of the home where petitioner resides, that he resides in the front of the house, and that JC has not resided in the house. See, Exhibit 3, p. 8, and Exhibit 1, p.15. She explained that JC used her mailing address, with her permission, due

to problems with receiving mail at his mother's residence. JC's written statement corroborates petitioner's testimony.

The Department's entire case was based JC's use of petitioner's address in various forums. There was no surveillance information provided that may have contradicted petitioner's generally credible testimony that JC never lived with her. There was no testimony of neighbors or acquaintances regarding JC's residence. Without something more, the respondent has only proven that JC used petitioner's address for his mailing address. The rebuttal offered here simply exceeds the Department's case in chief. I do not fault the respondent's decision to investigate this matter, since more than enough red flags were present to question JC's residence. This was an extremely close case, but I ultimately find that the respondent has not established that JC resided with petitioner during the overpayment periods at issue here. I thus will order the overpayment to be rescinded.

### **CONCLUSIONS OF LAW**

JC did not live petitioner during the period of March 1, 2014, through June 30, 2015; and thus the petitioner was not in a two parent household in that time period and was not overpaid Child Care benefits in this time period.

**NOW, THEREFORE, it is ORDERED**

That the matter be remanded to the county with instructions to rescind claim nos. [REDACTED] and [REDACTED] against petitioner and to cease recovery of the claims. These actions shall be completed within 10 days of the date of this Decision.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 14th day of October, 2015

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\sPeter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on October 14, 2015.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit  
Child Care Fraud  
Attorney [REDACTED]